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May 7, 2014

The Honorable Steven W. Rhodes
United States Bankruptcy Court
Eastern District of Michigan
Southern Division
211 W. Fort St., Suite 1800
Detroit, Michigan 48226

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U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT

Dear Judge Rhodes,

I am writing to you for two purposes. First, I seek clarification as to your intent with respect to paragraph 15 of the Order Appointing Expert Witness as it relates to the confidentiality of my investigation and work product. It is necessary to understand the extent of the confidentiality restrictions for my benefit and the benefit of the parties with whom I am interacting as I carry out my duties as the Court's Expert Witness. In the early stages of my investigation, I have had several questions posed to me that implicate the confidentiality of my work. Examples of questions posed to me recently for which I do not have an answer, include:

- Does the information provided to me by a creditor, or other party in interest, cause that information to be accessible to other parties in the case, or is it to be restricted from disclosure?
- Is it acceptable for counsel to a creditor, or other party in interest, to be present when I interview such party, or any other person or entity, that such counsel may call as a witness in the future?
- What, if any, of the information I collect will be subject to discovery or otherwise made available to a party in interest, other than the party providing such information, or in conjunction with the Expert's report or testimony?

In addition, I have the following questions regarding confidentiality and your expectations regarding my report:

- If certain materials provided to me during the course of my investigation are deemed confidential by the party providing them, may I include them as exhibits to my report and should I file them publicly or seek to file them under seal?

- Similarly, if the text of my report refers to, or incorporates, confidential materials, may I include them in unredacted text or should I redact them and provide unredacted copies to the Court and those parties directed by the Court?

For these and other reasons, I would appreciate your clarification as to the extent I am to treat my investigation, materials collected during my investigation and my work papers confidential.

Second, I respectfully request that the Court allow me to retain legal counsel at this juncture for certain limited purposes. I do not need or intend to seek the advice of counsel with respect to the subject matter of my investigation or expert opinion. Rather, I submit that it is necessary and appropriate for me, like expert witnesses retained in other litigation, to have the benefit of counsel with respect to discovery, the process of my investigation and providing testimony. Although my responsibilities run to the Court, my work is being provided in the context of a highly contested and controversial dispute. The parties and their counsel with whom I am engaged are being cooperative and are attempting to accommodate my requests. Nonetheless, the process is by its very nature adversarial and discovery and questions of legal process and procedure are outside of my expertise. I believe that in order for me to carry out my duties efficiently and effectively and to protect the integrity of the process, I require the benefit of legal counsel at this time to assist me with these matters. I expect that counsel will help me streamline the process and avoid the distractions that often affect and impede expert witness investigations. Moreover, at some future date, I may need additional legal guidance on the turnover of my work product, the confidentiality restrictions imposed by the Court, the defense of my testimony and responses to any *Daubert* or related challenges. These are matters as to which expert witnesses routinely and appropriately have the benefit of legal counsel. I feel that I would be prejudiced without access to legal counsel.

I am cognizant of the significant professional fees incurred in the case to date and do not make these requests lightly. I intend to be judicious in my use of counsel and sincerely believe that having the benefit of counsel will enable me to streamline the process and effectively manage my investigation and discovery and testimonial issues that commonly arise in the course of expert investigations.

Thank you for your consideration of my requests.

Respectfully,

Martha E. M. Kopacz